

SEP 27 2007

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

ARGEL OCHOA-CANCINO;
LILIAN OCHOA,

Petitioners,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 03-71902

Agency Nos. A74-809-050
A74-809-051

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007***

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Argel Ochoa-Cancino and Lilian Ochoa, natives and citizens of Mexico, petition for review of an order of the Board of Immigration Appeals (“BIA”) denying their request for administrative closure and affirming an immigration judge’s (“IJ”) order pretermittting their application for suspension of deportation. We have jurisdiction under 8 U.S.C. § 1252. We review the agency’s physical presence determination for substantial evidence, *Vera-Villegas v. INS*, 330 F.3d 1222, 1230 (9th Cir. 2003), and review claims of due process violations de novo, *see Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We deny the petition for review.

Substantial evidence supports the BIA’s conclusion that the Ochoas’ physical presence stopped accruing on the date they were served Orders to Show Cause and that they failed to establish the requisite seven years of continuous physical presence in the United States prior to that date. *See Ram*, 243 F.3d at 516 (holding that applications for suspension of deportation pending after the enactment of IIRIRA were subject to the stop-time provisions of that Act).

The Ochoas’ case was not eligible for administrative closure and “re-papering” because the government opposed closure. *See* 8 C.F.R. §1240.16 (2006) (the Attorney General has sole discretion over the termination of deportation proceedings for purposes of re-papering); *see also Matter of*

Gutierrez-Lopez , 21 I.&N. Dec. 479, 480 (BIA 1990) (“A case may not be administratively closed if opposed by either of the parties.”).

We are not persuaded by the Ochoas’ contention that the discretion vested in the Attorney General over repapering decisions violates due process.

PETITION FOR REVIEW DENIED.